

REMARKS

Reconsideration of the application, as amended, is respectfully requested in view of the following remarks.

As explained in the specification, it is important that soft bakery products be perceived as fresh. The specification indicates that while anti-staling agents are known, further improvement is desired. The invention is directed to the discovery that bakery products containing a sterol and/or stanol ester of fatty acids in combination with a selected emulsifier are soft and show a reduced staling on storage.

As recited in claim 10 then, the invention comprises a bakery product which includes flour and from 0.5 – 15 wt% on flour of sterol and/or stanol fatty acid ester, and from 0.1 – 1 wt% of emulsifier on flour. The emulsifier is selected from the group of calcium stearoyl lactylate, sodium stearoyl lactylate, glycerol monostearate, sodium stearoyl fumarate, succinylated monoglyceride, ethoxylated mono- and diglycerides, diacetyl tartaric acid esters of mono- and diglycerides, polyglycerol esters, propylene glycol monoesters, polyglycerolesters, sorbitan esters or polysorbates, lecithin and a combination thereof.

The Office asserts that claim 10 is vague and indefinite and that the percentage based on flour weight is unclear. The Office asserts that it is unclear whether applicant is claiming a baker percentage which is based on 100% flour or some other weight.

It is submitted that the language of claim 10 is very clear. Claim 10 recites "from 0.5 – 15 wt% on flour of sterol and/or stanol fatty acid ester. It is submitted that this is very clear that the weight percentage is based on the weight of flour rather than the overall composition. Likewise, the weight percentage range of emulsifier is also "on flour." In

paragraph [0036], the amount of anti-staling agent in a preferred embodiment in the bakery products is from 1 – 10 wt%, preferably 2 – 7 wt% "on total weight of the flour." In the next paragraph the amount of emulsifier is said to be "on flour." It is submitted that it is very clear what applicants are claiming.

The Office points to no teaching by Yuan et al. of the presently recited levels. The Office points to Karppanen et al., EP 948265 as teaching in example 1 a white bread which includes wheat flour, plant sterol/stanol and emulsifier. Karppanen et al. do not appear to mention in example 1 the level of emulsifier, which is used in combination with other ingredients. Therefore it is not apparent how one of ordinary skill would be led by Karppanen et al. to the present invention.

The Office asserts that if 20% of the food ingredient of Yuan et al. is used in Karppanen's bread formulation containing 30 kilograms flour, then the amount of the food ingredient is 6 kilograms. This calculation is not understood since the Office points to no reason based on Yuan et al. why the 20% should be applied to flour rather than to the overall composition of the food. Moreover, the Office appears to use hindsight to try to "fit" the present invention within the combination of Yuan et al. and Karppanen et al.

Even less do Karppanen et al. suggest the subject matter of new claims 11-13. Claim 12 is supported at paragraph [0041] and claim 13 is supported at paragraph [0042]. Claim 11 is supported at paragraph [0033].

Even if the Office were correct that a prima facie case of obviousness were present, it is submitted that such is overcome by the showing of unexpected results in the present examples. In paragraph [0062] it is indicated that the combination of sterol esters and CSL substantially decreases the firmness and reduces the staling rate. In paragraph [0065] the specification indicates that the combination of stanol esters and CSL

substantially decreases the firmness and reduces the staling rate. The Office points to no reason why these results would be expected. Therefore it is submitted that unexpected results have been shown and it is requested that the obviousness rejection be withdrawn.

In view of the foregoing, it is respectfully requested that rejection be withdrawn and the application, as amended, be allowed.

Respectfully submitted,

/Gerard J. McGowan, Jr./

Gerard J. McGowan, Jr.
Registration No. 29,412
Attorney for Applicant(s)

GJM/mpk
(201) 894-2297